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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/743,077	12/23/2003	Wilmont Frederick Howard JR.	2003	8102

7590 11/09/2006

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EXAMINER

YUAN, DAH WEI D

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/743,077

Applicant(s)

HOWARD ET AL.

Examiner

Dah-Wei D. Yuan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-10 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 05202004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application
- ☐ Other: ____.

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**HIGH VOLTAGE LAMINAR CATHODE MATERIALS FOR LITHIUM
RECHARGEABLE BATTERIES, AND PROCESS FOR MAKING THE SAME**

Examiner: Yuan

S.N. 10/743,077

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November 3, 2006

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Igawa et al. (JP 10-241691).

With respect to claims 1,2,8, Igawa et al. teach a lithium battery comprising a cathode active material having a formula of $\text{Li}_w\text{Mn}_{0.6}\text{Ni}_{0.2}\text{Mg}_{0.01}\text{Cu}_{0.2}\text{O}_2$ wherein $0.2 \leq w \leq 1.15$. See Table 5, paragraph 17.

With respect to claims 5-7, Igawa et al. do not specifically disclose the gravimetric capacity and capacity fade at a given operation temperature. However, it is the position of the examiner that such properties are inherent, given that both Igawa et al. and the present application utilize the same cathode active material. A reference which is silent about a claimed invention's features is inherently anticipatory if the missing feature *is necessarily present in that which is described in the reference*. In re Robertson, 49 USPQ2d 1949 (1999).

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3. Claims 9,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Gao et al. (US 6,361,756 B1).

Gao et al. teach a lithium manganese nickel oxide of a formula $\text{LiMn}_{1-b}\text{Ni}_c\text{A}^0_d\text{A}^1_e\text{A}^2_f\text{O}_2$, which incorporates Ca or Mg into the structure. The compound is formed by mixing oxide, hydroxides, carbonates, nitrates, sulfates, chlorides or fluorides. The resulting mixture is heat treated between 800° and 1000°C. See Column 4, Line 12 to Column 5, Line 18.

Allowable Subject Matter

4. Claims 3,4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 3,4 would be allowable because the prior art does not disclose or suggest $0.1 \leq x \leq 0.4$ and $0 < y \leq 0.15$.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dah-Wei D. Yuan whose telephone number is (571) 272-1295. The examiner can normally be reached on Monday-Friday (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (571) 272-1292. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dah-Wei D. Yuan
November 3, 2006



DAH-WEI YUAN
PRIMARY EXAMINER